

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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|                                    |   |                         |
|------------------------------------|---|-------------------------|
| In Re                              | § | Chapter 11              |
|                                    | § |                         |
| AEROPOSTALE, INC., <i>et al.</i> , | § | Case No. 16-11275 (shl) |
|                                    | § |                         |
| Debtors. <sup>1</sup>              | § | Jointly Administered    |

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**OBJECTION OF LIT-NORTHEND, LLC TO DEBTORS' MOTION PURSUANT TO 11  
U.S.C. §365(d)(4) EXTENDING THE TIME TO ASSUME OR REJECT  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
[Dkt No 143]**

TO THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:

Creditor and party-in-interest LIT-Northend, LLC ("LIT") objects to Debtors' Motion Pursuant to 11 U.S.C. §365(d)(4) Extending The Time to Assume Or Reject Unexpired Leases Of Nonresidential Real Property, and in support thereof would show as follows:

**BACKGROUND**

1. LIT is the landlord of Debtor Aeropostale, Inc. ("Debtor") for one of its distribution centers containing approximately 315,000 rentable square feet and located at 2 Brick Plant Road, South River, New Jersey 08810 (the "Premises"). The lease which forms the basis of this relationship is scheduled to expire on May 31, 2021.

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification number, as applicable, are as follows: Aeropostale, Inc. (3880); Aeropostale West, Inc. (7013); Jimmy'Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc.. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Canada Corp. (N/A); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors' corporate headquarters is located at 112 West 34<sup>th</sup> Street, 22<sup>nd</sup> Floor, New York, NY 10120.

2. Prior to the filing of this case, Debtor owed LIT \$174,175.05 for April 2016 rent and other charges. It tendered two checks in April for the payment of that amount, but those checks were returned without payment by Debtor's bank.

3. Debtor remains in the Premises and its prepetition debt to LIT is approximately the aforementioned \$174,175.05. As of the filing of this objection, Debtor has not paid any post-petition rent (most notably May 2016 rent) although it is using the Premises to conduct its business.

### **OBJECTION**

4. LIT objects to the requested extension because Debtor has failed to satisfy the spirit, if not the letter of the law, set forth in *In re Burger Boys*, 94 F.3d 755, 761 (2<sup>nd</sup> Cir 1996). In particular, Debtor has not paid post-petition rent in a timely manner. The authority of *In re Stone Barn Manhattan LLC* in this jurisdiction is clear - - debtors are "responsible for the stub rent measured on a daily basis as it accrued after the date of orders for relief..." *In re Stone Barn Manhattan LLC*, 398 B.R. 359, 365 (Bankr. S.D.N.Y.2008). Coupled with the instruction contained in 11 U.S.C. §365(d)(3) that the debtor-in-possession must timely perform all obligations, it is clear that Debtor is violating one of the primary factors in determining whether an extension should be granted - - failure to timely pay for the use of the property.

5. Debtor has also been vague regarding a timetable for paying stub rent for May 2016. Upon information and belief, Debtor has indicated that it may not pay this rent until July 2016. Such a plan, if true, violates section 365(d)(3). This court should not permit a wholesale extension of time unless Debtor commits to paying the May stub rent immediately as May will have passed by the time of the hearing on Debtor's motion.

6. Furthermore, the LIT lease is not one of debtor's primary assets as it has hundreds of leases. Debtor has also indicated that it will present a plan to either scale down its operations or sell its business which casts into doubt whether it needs this lease for its operations.

7. Debtor's request for an extension at the early stage of this case has not been driven by an analysis of its leases, and in particular the lease with LIT, but is a result of agreements made with its lenders on a DIP financing package which dictated milestones for the Debtors. In other words, Debtor's request for an extension until November 30, 2016 fails to justify why an extension to this date is needed other than this is what it agreed to in the DIP financing package. There is certainly no reason for any extension, even if supported by a justifiable need, to run past confirmation of a plan. This extension runs over two months past that deadline. Consequently, the time for debtor to decide whether or not to assume or reject the lease should not be extended or curtailed considerably.

8. Alternatively, LIT should be allowed to market the Premises during any extension period since it is doubtful that its lease with Debtor will be needed in Debtor's scaled down operation.

WHEREFORE, LIT-Northend, LLC requests that the relief sought by Debtors be denied and that it have such other and further relief to which it may be entitled.

Respectfully submitted,

KESSLER & COLLINS  
A Professional Corporation

By: /s/ Howard C. Rubin  
HOWARD C. RUBIN  
State Bar No. 17361400  
hrubin@kesslercollins.com

2100 Ross Avenue, Suite 750  
Dallas, Texas 75201  
(214) 379-0722 Office  
(214) 373-4714 Facsimile

*ATTORNEYS FOR CREDITOR AND  
PARTY-IN-INTEREST LIT-NORTHEND,  
LLC*

**CERTIFICATE OF SERVICE**

I, Howard C. Rubin, hereby certify that on May 23, 2016, I caused a true and correct copy of the *Objection To Debtors' Motion Pursuant to 11 U.S.C. §365(d)(4) Extending The Time to Assume Or Reject Unexpired Leases Of Nonresidential Real Property* to be sent via the Court's ECF System to all parties registered on same, as well as by ECF service, first class mail, postage prepaid or e-mail, on the parties listed below.

/s/ Howard C. Rubin  
HOWARD C. RUBIN

SERVICE LIST

Trustee, New York  
75 Chapel Street  
Albany, NY 12207

Garrett A Fail  
Ray C Schrock  
Jacqueline Marcus  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[Garrett.fail@weil.com](mailto:Garrett.fail@weil.com)

Albert Togut  
Togut Segal & Segal LLP  
One Penn Plaze, Ste 3335  
New York, NY 10119  
[alcourt@teamtogut.com](mailto:alcourt@teamtogut.com)

Brian S Masumoto  
Office of U.S. Trustee  
33 Whitehall St., 21<sup>st</sup> Floor  
New York, NY 10004

Susan Arbeit  
Brian Masumoto  
Office of the U.S. Trustee  
U.S. Federal Office Building  
201 Varick St., Room 1006  
New York, NY 10014

Mark E Hall  
Tara J Schellhorn  
Riker Danzig Scherer Hyland & Perretti  
Headquarters Plaza, One Speedwell Ave.  
Morristown, NJ 07962-1981  
[mhall@riker.com](mailto:mhall@riker.com)  
[tschellhorn@riker.com](mailto:tschellhorn@riker.com)

John Dillman  
Linebarger Goggan Blair & Sampson LLP  
PO Box 3064  
Houston, TX 77253  
[Houston\\_bankruptcy@publicans.com](mailto:Houston_bankruptcy@publicans.com)

Joseph E Shickich, Jr.  
Riddell Williams P.S.  
1001-4<sup>th</sup> Ave., Ste 4500  
Seattle, WA 98154

David G Aelvoet  
Linebarger Goggan Blair & Sampson, LLP  
711 Navarro St., Ste 300  
San Antonio, TX 78205  
[Sanantonio.bankruptcy@publicans.com](mailto:Sanantonio.bankruptcy@publicans.com)

Herbert H Slatery III  
Marvin E Clements, Jr.  
Office of the Attorney General  
Bankruptcy Division  
PO Box 20207  
Nashville, TN 37202-0207

Elizabeth Weller  
Linebarger Goggan Blair & Sampson LLP  
2777 N Stemmons Frwy., Ste 1000  
Dallas, TX 75207  
[Dallas.bankruptcy@publicans.com](mailto:Dallas.bankruptcy@publicans.com)

Lee Gordon  
McCreary Veselka Bragg & Allen, PC  
PO Box 1269  
Round Rock, TX 78680  
[sonya.ragsdale@mvalaw.com](mailto:sonya.ragsdale@mvalaw.com)

Amy M Williams  
Patras Williams, LLC  
14 Countryside Lane, Suite 100  
Ringwood, NJ 07456  
[awilliams@pwjlaw.com](mailto:awilliams@pwjlaw.com),

Adam C. Rogoff  
Robert T Schmidt  
Andrew M Dove  
Kramer Levin Naftalis & Frankel, LLP  
1177 Avenue of the Americas  
New York, NY 10036

William Novotny  
Dickinson Wright PLLC  
1850 N. Central Avenue, Ste 1400  
Phoenix, AZ 85004

Rick A Steinberg  
Price Meese Shulman & D'Arminio, PC  
50 Tice Blvd., Ste 380  
Woodcliff Lake, NJ 07677

Howard Marc Spector  
Spector & Johnson, PLLC  
12770 Coit Rd., Ste 1100  
Dallas, TX 75251

Dustin P Branch  
Ballard Spahr LLP  
2029 Century Park East, Suite 800  
Los Angeles, CA 90067

S Stewart Smith  
Belkin Burden Wenig & Goldman LLP  
270 Madison Avenue  
New York, NY 10016

Patrick Collins  
Veronique A Urban  
Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, NY 11556-1320

Robert J Feinstein  
Jeffrey N Pomerantz  
Bradford J Sandler  
Pachulski Stang Ziehl & Jones LLP  
780 Third Ave., 34<sup>th</sup> Floor  
New York, NY 10017-2024

David M Blau  
Paul S Magy  
Clark Hill PLC  
151 S Old Woodward Ave., Ste 200  
Birmingham, MI 48009

Douglas J Pick  
Pick & Zabicki LLP  
369 Lexington Ave., 12<sup>th</sup> Floor  
New York, NY 10017

Jeffrey A Wurst  
Ruskin Moscou Faltischek, PC  
East Tower, 15<sup>th</sup> Floor  
1425 RXR Plaza  
Uniondale, NY 11556-1425

Louis T DeLucia  
Alyson M Fiedler  
Andrew M Minear  
Schiff Hardin LLP  
666 Fifth Avenue  
New York, NY 10103

Edward S Weisfelner  
Bennett S Silverberg  
Brown Rudnick LLP  
Seven Times Square  
New York, NY 10036

Andrew B Eckstein  
Blank Rome LLP  
405 Lexington Avenue  
New York, NY 10174-0208  
[aeckstein@blankrome.com](mailto:aeckstein@blankrome.com)

Jason S Kim  
Blank Rome LLP  
2029 Century Park East, 6<sup>th</sup> Fl  
Los Angeles, CA 90067  
[jkim@blankrome.com](mailto:jkim@blankrome.com)

Victoria A Guilfoyle  
Blank Rome LLP  
1201 Market Street, Suite 800  
Wilmington, DE 19801  
[Guilfoyle@blankrome.com](mailto:Guilfoyle@blankrome.com)

James A. Stempel  
Robert B Ellis  
Stephen Hackney  
Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654  
[jstempel@kirkland.com](mailto:jstempel@kirkland.com)  
[rellis@kirkland.com](mailto:rellis@kirkland.com)  
[Stephen.hackney@kirkland.com](mailto:Stephen.hackney@kirkland.com)

Scott Rutsky  
Jared D Zajac  
Peter Antoszyk  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036  
[srutsky@proskauer.com](mailto:srutsky@proskauer.com)  
[jzajac@proskauer.com](mailto:jzajac@proskauer.com)

Joel Charles Shapiro  
Blank Rome LLP  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998  
[shapiro-JC@blankrome.com](mailto:shapiro-JC@blankrome.com)

William C Heuer  
Patricia H. Heer  
Duane Morris LLP  
1540 Broadway  
New York, NY 10036  
[wheuer@duanemorris.com](mailto:wheuer@duanemorris.com)  
[phheer@duanemorris.com](mailto:phheer@duanemorris.com)

Bruce J Zabarauskas  
Thompson & Knight LLP  
900 Third Avenue, 20<sup>th</sup> Floor  
New York, NY 10022  
[bruce.zabarauskas@tklaw.com](mailto:bruce.zabarauskas@tklaw.com)

David S Berman  
Reimer & Braunstein LLP  
Three Center Plaza  
Boston, MA 02108  
[dberman@riemerlaw.com](mailto:dberman@riemerlaw.com)

Jeffrey Kurtzman  
Kurtzman Stead, LLC  
401 S 2<sup>nd</sup> St, Suite 301  
Philadelphia, PA 19147  
[kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com)

David L. Pollack  
Ballard Spahr LLP  
51<sup>st</sup> Fl-Mellons Bank Center  
1735 Market Street  
Philadelphia, PA 19103  
[Pollack@ballardspahr.com](mailto:Pollack@ballardspahr.com)

Patrick Collins  
Veronique A Urban  
Farrell Fritz, PC  
1320 RXR Plaza  
Uniondale, NY 11556-1320  
[pcollins@farrellfritz.com](mailto:pcollins@farrellfritz.com)  
[vurban@farrellfritz.com](mailto:vurban@farrellfritz.com)

Ronald Gold  
Frost Brown Todd LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, OH 45202  
[rgold@fbtlaw.com](mailto:rgold@fbtlaw.com)

Robert L LeHane  
Jennifer D Raviele  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, NY 10178  
[kdwbankruptcydepartment@kelleydrye.com](mailto:kdwbankruptcydepartment@kelleydrye.com)  
[rlehane@kelleydrye.com](mailto:rlehane@kelleydrye.com)  
[jraviele@kelleydrye.com](mailto:jraviele@kelleydrye.com)

Kevin M Newman  
Menter Rudin & Trivelpiece P.C.  
308 Maltbie Street, Ste 200  
Syracuse, NY 13204-1439  
[knewman@menterlaw.com](mailto:knewman@menterlaw.com)

David W Dykhouse  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of Americas  
New York, NY 10036-6710  
[dwdykhouse@pbwt.com](mailto:dwdykhouse@pbwt.com)

Elizabeth Branda Calvo  
Dustin L Banks  
Perdue Brandon Fielder Collins & Mott  
1919 S Shiloh Rd., Ste 310  
Garland, TX 75042  
[dbanks@pbfcv.com](mailto:dbanks@pbfcv.com)

Richard M Meth  
Fox Rothschild LLP  
75 Eisenhower Parkway, Ste 200  
Roseland, NJ 07068  
[msteen@foxrothschild.com](mailto:msteen@foxrothschild.com)  
[rmeth@foxrothschild.com](mailto:rmeth@foxrothschild.com)

Douglas B Rosner  
Vanessa P Moody  
Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110-3333  
[drosner@goulstonstorrs.com](mailto:drosner@goulstonstorrs.com)  
[vmoodv@goulstonstorrs.com](mailto:vmoodv@goulstonstorrs.com)

Ilan Markus  
Niclas A Ferland  
LeClairRyan  
545 Long Wharf Drive, 9<sup>th</sup> Floor  
New Haven, CT 06511  
[ilan.markus@leclairryan.com](mailto:ilan.markus@leclairryan.com)  
[niclas.ferland@leclairryan.com](mailto:niclas.ferland@leclairryan.com)

David A Nold  
Nold Muchinsky PLLC  
10500 NE 8<sup>th</sup> Street, Ste 930  
Bellevue, WA 98004  
[dnold@noldmuchlaw.com](mailto:dnold@noldmuchlaw.com)  
[bmuchinsky@noldmuchlaw.com](mailto:bmuchinsky@noldmuchlaw.com)  
[jgraham@noldmuchlaw.com](mailto:jgraham@noldmuchlaw.com)

Elizabeth Branda Calvo  
Perdue Brandon Fielder Collins & Mott  
500 E Border St., Ste 640  
Arlington, TX 76010  
[ebscalvo@pbfcv.com](mailto:ebscalvo@pbfcv.com)

Laura J Monroe  
Perdue Brandon Fielder Collins & Mott  
PO Box 817  
Lubbock, TX 79408  
[lmunroe@pbfcv.com](mailto:lmunroe@pbfcv.com)



Owen M Sonik  
Perdue Brandon Fielder Collins & Mott  
1235 North Loop West, Ste 600  
Houston, TX 77008  
[houbank@pbfc.com](mailto:houbank@pbfc.com)

Ronald M Tucker  
Simon Property Group, Inc.  
225 West Washington St.  
Indianapolis, IN 46204  
[rtucker@simon.com](mailto:rtucker@simon.com)

Rachel R Obaldo  
Texas Attorney General  
Bankruptcy & Collections Division  
PO Box 12548  
Austin, TX 78711-2548  
[Rachel.obaldo@texasattorneygeneral.gov](mailto:Rachel.obaldo@texasattorneygeneral.gov)

Fred B Ringel  
Robinson Brog Leinwand Green Et Al.  
875 Third Avenue, 9<sup>th</sup> floor  
New York, NY 10022  
[fbr@robinsonbtog.com](mailto:fbr@robinsonbtog.com)

Andrew S Conway  
Taubman Landlords  
200 East Long Lake Road, Ste 300  
Bloomfield Hills, MI 48304  
[aconway@taubman.com](mailto:aconway@taubman.com)